

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THOMAS KELLY,

Petitioner,

- against -

SUPERINTENDENT LEMPKE,

Respondent.

**MEMORANDUM
OPINION & ORDER**

08 Civ. 8241 (BSJ) (RLE)


RONALD L. ELLIS, United States Magistrate Judge:

Pro se Petitioner Thomas Kelly seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 12, 2009, Kelly filed an application for the appointment of counsel to assist him in obtaining the relief he seeks through his instant Petition. For the reasons that follow, Kelly's request for counsel is **DENIED, without prejudice to renew.**

Civil litigants, unlike criminal defendants, do not have a constitutional right to the appointment of counsel. However, under 28 U.S.C. § 1915(e)(1), "[t]he court may request an attorney to represent any person unable to afford counsel." Specifically in the context of habeas cases, the Court may appoint an attorney to represent a prisoner pursuant to 18 U.S.C. § 3006A. The appointment of counsel is discretionary in a habeas corpus proceeding. *See Coita v. Leonardo*, 1998 WL 187416, at *1 (N.D.N.Y. April 14, 1998). Among the factors which a court may consider in determining whether to grant a habeas corpus petitioner's application for the appointment of counsel is whether an evidentiary hearing should be held in connection with the petition. Where no hearing is to be held, the appointment of counsel is not warranted. *See U.S. ex rel Cadogan v. LaVallee*, 502 F.2d 824, 826 (2d Cir. 1974); *see also Adams v. Grenier*, 1997 WL 266984 (S.D.N.Y. May 20, 1997).

The Respondent has not yet filed an answer or other response to Kelly's Petition, and the deadline for doing so is not until May 4, 2009. Based upon the Court's review of Kelly's Petition, and in consideration of the present status of the action, Kelly's request is premature. However, even a cursory examination of the Petition suggests Kelly is capable of presenting the relevant issues to the Court, and a hearing does not appear to be necessary. Kelly's communications to the Court demonstrate his ability to pursue his Petition and, absent a change in circumstances, that he can adequately represent himself in the instant action. Therefore, Kelly's application for counsel is **DENIED, without prejudice to renew.**

SO ORDERED this 29th day of April 2009
New York, New York


The Honorable Ronald L. Ellis
United States Magistrate Judge